AGREEMENT BETWEEN

LAKE COUNTY, FLORIDA AND

FLATWOODS FOREST PRODUCTS, INC.

FOR

TREE HARVESTING

RFP 08-0254

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, by and through its Board of County Commissioners, and Flatwoods Forest Products, Inc., a Florida corporation, hereinafter referred to as CONSULTANT.

Recitals

WHEREAS, the COUNTY has asked for proposals from qualified persons and/or firms who are capable of providing tree harvesting services; and

WHEREAS, the CONSULTANT desires to provide such services for the COUNTY; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, premises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1. Recitals

1.1 The foregoing recitals are true and correct and incorporated herein by reference.

Article 2. Scope of Professional Services

- 2.1 On the terms and conditions set forth in this Agreement, CONSULTANT shall perform the Scope of Services set forth in Exhibit A, attached hereto and incorporated herein by reference.
- 2.2 The CONSULTANT shall complete all services within sixty (60) days of receipt of the Notice to Proceed. In the event weather conditions prevent the CONSULTANT from required services, the COUNTY shall review and approve if justified the necessary extensions of time.

Article 3. Payment

3.1 In no event shall the contract amount exceed \$39,500 unless a change order has been executed in accordance with the COUNTY'S Purchasing Policy and Procedures. A copy of the COUNTY'S Purchasing Policy and Procedures shall be made available to the CONSULTANT upon request. Payment shall be made at the completion of services.

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3.2 Invoices shall be submitted in duplicate to Roberto Bonilla, Parks Director, at P.O. Box 7800, Tavares, Florida 32778. Each invoice shall contain the contract number and a detailed description of services and fees. The COUNTY shall make payment on all invoices in accordance with the Florida Prompt Payment Act, sections 218.70 through 218.79, Florida Statutes.

Article 4. County Responsibilities

- 4.1 COUNTY shall reimburse CONSULTANT, in accordance with the provisions of Article 3 for required services timely submitted and approved and accepted by COUNTY in accordance with the terms of this Agreement.
- 4.2 Upon request, the COUNTY will provide to the CONSULTANT any data the COUNTY possesses that would be useful to the CONSULTANT in the completion of the required services.

Article 5. Special Terms and Conditions

- 5.1 <u>Qualifications.</u> Firms or individuals will be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by the statutes to perform the services contained herein.
- 5.2 <u>Termination</u>. This Agreement may be terminated by the COUNTY upon ten (10) days advance written notice to the other party; but if any work or service/Task hereunder is in progress but not completed as of the date of termination, then this Agreement may be extended upon written approval of the COUNTY until said work or service(s)/Task(s) is completed and accepted.
- A. Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of COUNTY with the required 10 day advance written notice, COUNTY shall reimburse CONSULTANT for actual work satisfactorily completed.
- B. Termination for Cause. Termination by County for cause, default, or negligence on the part of CONSULTANT shall be excluded from the foregoing provision. Termination costs, if any, shall not apply. The 10-day advance notice requirement is waived in the event of termination for cause.
- C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, this Agreement shall be canceled and the CONSULTANT shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services/Tasks delivered under this Agreement.
- 5.3 <u>Subletting of Contract.</u> This Agreement shall not be sublet except with the written consent of the COUNTY'S Procurement Services Director. No such consent shall be construed as making the COUNTY a party to the subcontract or subjecting the COUNTY to liability of any kind to any subcontractor. No subcontract shall under any circumstances relieve the CONSULTANT of liability and obligations under this Agreement and all transactions with the COUNTY must be through the CONSULTANT.

5.4 <u>Insurance and Bond.</u> The contractor shall purchase and maintain, at its expense, from a company or companies authorized to do business in the State of Florida, and which are acceptable to the County, insurance policies containing the following selected types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Construction by the contractor or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate Products-Completed Operations Personal & Adv. Injury Fire Damage Medical Expense	\$500,000 \$500,000 \$500,000 \$50,000 \$5,000
Contractual Liability	\$300,000

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$300,000
or Bodily Injury (per person) Bodily Injury (per accident)	\$100,000 \$300,000
Property Damage	\$100,000

Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

Employers Liability with the following minimum limits and coverage:

Each Accident	\$100,000
Disease-Each Employer	\$100,000
Disease-Policy Limit	\$500,000

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear all applicable policies.

Certificate(s) of insurance shall provide for a minimum of sixty (60) days prior written notice to the County of any change, cancellation, or nonrenewal of the required insurance.

Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.

Certificate of insurance shall evidence a waiver of subrogation in favor of the County, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the County.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS. P.O. BOX 7800
TAVARES, FL 32778-7800

All or self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the County. At the option of the County, the insurer shall reduce or eliminate such or self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The County shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.

The Contractor shall be responsible for subcontractors and their insurance. Subcontractors are to provide Certificates of Insurance to the County evidencing coverage and terms in accordance with the Contractor's requirements.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the County of any insurance supplied by the vendor, nor a failure to disapprove that insurance, shall relieve the vendor of full responsibility of liability, damages, and accidents as set forth herein.

Occupational Safety and Health Administration (OSHA) Logging Regulations. operations on this timber sale is subject to inspection for compliance with the logging operations regulations at 29 CFR 1910.266.

- Indemnity. CONSULTANT shall indemnify and hold COUNTY and its agents, officers, commissioners or employees harmless for any damages resulting from failure of CONSULTANT to take out and maintain the above insurance. Additionally, CONSULTANT agrees for good and valuable consideration in the amount of ten dollars (\$10.00) to indemnify, and hold the Board of County Commissioners, Lake County, Florida, and its officers, commissions, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities to the extent resulting from the negligent act, error or omission of CONSULTANT, its agents, employees or representative, in the performance of CONSULTANT'S duties set forth in this Agreement.
- Independent Contractor. CONSULTANT agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of 5.6 COUNTY. CONSULTANT shall have no authority to contract for or bind COUNTY in any manner and shall not represent itself as an agent of COUNTY or as otherwise authorized to act for or on behalf of COUNTY. Additionally, CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon on resulting from the award or making of this Agreement.
- Ownership of Deliverables. Upon completion of and payment for a task CONSULTANT agrees all Tasks and/or deliverables under this Agreement, and other data generated or developed by CONSULTANT under this Agreement or furnished by COUNTY to CONSULTANT shall be and remain the property of COUNTY. CONSULTANT shall perform any acts that may be deemed necessary or desirable by COUNTY to evidence more fully transfer of ownership of all Tasks and/or deliverables to COUNTY. Additionally, CONSULTANT hereby represents and warrants that it has full right and authority to perform its obligations specified in this Agreement. CONSULTANT and COUNTY recognize that CONSULTANT'S work product submitted in performance of this Agreement is intended only for the project described in this Agreement. COUNTY'S alteration of CONSULTANT'S work product or its use by COUNTY for any other purpose shall be at COUNTY'S sole risk.
- Upon the request of the COUNTY, but in any event upon termination of Return of Materials. this Agreement, CONSULTANT shall surrender to the COUNTY all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials pertaining to the services hereunder, that were furnished to the CONSULTANT by the COUNTY pursuant to this Agreement. CONSULTANT may keep copies of all work product for its records.
- NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY 5.9 DELAYS. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work from any cause whatsoever, shall relieve the CONSULTANT of his duty to perform or give rise to any right to damages or additional compensation from the COUNTY. CONSULTANT expressly acknowledges and agrees that the CONSULTANT shall receive no damages for delay. The CONSULTANT'S sole remedy, if any, against the COUNTY shall be the right to seek an

extension to the contract time. However, this provision shall not preclude recovery of damages by the CONSULTANT for hindrances or delays due solely to fraud, bad faith or active interference on the part of the COUNTY. Otherwise, CONSULTANT shall be entitled to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

- Retaining Other Consultants. Nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the CONSULTANT or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.
- Accuracy. The CONSULTANT is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, reports or other services.
- Truth in Negotiation Certificate. If applicable, for all lump-sum or cost-plus fixed fee agreements exceeding \$150,000, the firm awarded the agreement must execute a truth in negotiation certificate stating 5.12 that the wage rates and other factual unit costs are accurate, complete and current, at the time of contracting. Any agreement requiring this certificate shall contain a provision that the original agreement price and any additions shall be adjusted to exclude any significant sums by which the COUNTY determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the contract. Execution of this Agreement constitutes execution of the Truth in Negotiation Certificate.
- Codes and Regulations. All work completed under this Agreement shall conform to all 5.13 applicable federal, state and local statutes, codes, regulations and ordinances.
- Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- Prohibition Against Contingent Fees. CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT 5.15 to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.
- Right to Audit. The County reserves the right to require CONSULTANT to submit to an audit by any auditor of the COUNTY'S choosing. CONSULTANT shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. CONSULTANT shall retain all records pertaining to this Agreement and upon request make them available to the COUNTY for three (3) years following expiration of the Agreement. CONSULTANT

agrees to provide such assistance as may be necessary to facilitate the review or audit by the COUNTY to ensure compliance with applicable accounting and financial standards.

5.17 Public Records. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the provider for or on behalf of the COUNTY shall be the property of the COUNTY and will be turned over to the COUNTY upon request. In accordance with Florida "Public Records" law, Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the COUNTY are public records available for inspection by any person even if the file or paper resides in the CONSULTANT'S office or facility. Prior to the close out of the contract, the CONSULTANT shall appoint a records custodian to handle any records request and provide the custodian's name and telephone number(s) to the Contracting Officer.

Article 6. General Conditions

- 6.1 This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida.
- 6.2 Neither Party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.
- 6.3 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.
- 6.4 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.
- 6.5 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.
- 6.6 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.
- 6.7 During the term of this Agreement CONSULTANT assures COUNTY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONSULTANT does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against CONSULTANT employees or applicants for employment. CONSULTANT understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.
- 6.8 CONSULTANT shall at all times comply with all Federal, State and local laws, rules and regulations.

- 6.9 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 6.10 Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to CONSULTANT:

If to COUNTY:

Chuck Sellars Flatwoods Forest Products, Inc. 240 West Highway 44 Leesburg, Florida 34748 County Manager Post Office Box 7800 Tavares, Florida 32778-7800

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

Article 7. Scope of Agreement

7.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

CONSULTANT

Name:

Title: Prec

9-29-8

Agreement Between Lake County, Florida and Flatwoods Forest Products, Inc.; RFP 08-0218 Tree Harvesting

ATTEST:

Neil Kelly, Clerk of the Board of County Commissioners of Lake County, Florida

COUNTY

LAKE COUNTY, through its BOARD OF COUNTY COMMISSIONERS

Welton G. Cadwell, Chairman

This <u>28</u> day of <u>October</u>, 2008.

Approved as to form and legality:

Sanford A. Minkoff County Attorney

EXHIBIT A



Price sheet and proposal

RFP# 08-0252

Office 352-787-1161 Cell 352-267-9058 Fax 352-787-2410

1. Ferndale Park

The described trees (laurel oaks) unfortunately are not of a merchantable quality and have no monetary value. However they can be harvested, piled, and disposed of either by burning or grinding. This can be done efficiently with stumps being cut at ground level or at root swell level on the larger trees. The following is lump sum cost this is includes all laurel oaks on the Ferndale project

- A. Cutting with a mechanical rubber tired feller-buncher and placing in small groups of 2 to 6 trees. \$17000.00 (cost to the county)
- B. Putting all the cut trees in large tight piles ready to burn, either by skidding or carrying to burn area and stacking with knuckle boom loaders. \$16000.00 (cost to the county)
- C. Burning all the piled trees. This includes obtaining the burn permit, stirring fires until consumed, and requires at least 2 pieces of heavy equipment at all times. This requires ideal weather conditions and may take more time than the 40 allotted days. \$8000.00 (cost to the county)

2. Pine Forest Park

The described trees are of merchantable quality and have some value. However because of the minimal quanity the mobilization cost on my part will offset the value. \$0.00 (cost to the county)

3. Lake Idamere Park

The described trees are of merchantable quality and have some value. The quanity is relatively small. However is enough to cover mobilization cost and still have positive value, \$1500.00 (value to the county)

Ferndale cutting

\$17000 cost

Piling

\$16000 cost

Burning

\$8000 cost

Pine Forest Park

value \$0

Lake Idamere Park

\$1500 value

\$39500 total cost to the county

huch Siller Thank You

FERNDALE PRESERVE





